IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8776 OF 2004

Dinesh Chantaman Borji .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for petitioner

Ms.J.S.Pawar, A.G.P. for State.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 29TH NOVEMBER 2004.

P.C.

. Rule. Learned A.G.P. waives service. By consent rule made returnable forthwith.

2. Heard Shri Mendadkar for petitioner and learned A.G.P. for respondents.

3. Aggrieved by the decision of the Scrutiny Committee rejecting the appeal of petitioner directed against the order passed by respondent No.3, present petition under Article 226 of the Constitution of India is instituted.

4. Petitioner is a resident of village Murud, Alibag. He claims to be belonging to Mahadeo Koli, Scheduled Tribe. On the strength of his school leaving certificate as well as that of his relations, petitioner applied for issuance of caste certificate to the competent authority (respondent No.3). It is the grievance of petitioner that respondent No.3 refused to issue caste certificate. An order to this effect was passed on 10th November 2003.

5. It is not in dispute that Act No.23/2001 provides for an appeal against an order of the S.D.O. (competent authority) to the appellate authority i.e. scrutiny committee. Petitioner, therefore, preferred an appeal which is rejected by the impugned order by the scrutiny committee.

6. Mr.Mendadkar submits that the competent

authority as well as the appellate authority were in error in rejecting the prayer of petitioner for issuance of caste certificate. He submits that the order is ex parte and has been passed without affording any opportunity of being heard in the matter. That apart, he submits that the competent authority as well as appellate authority proceeded on the basis that petitioner has not been able to substantiate his request for issuance of caste certificate. He invites our attention to the annexures to petition and contends that all this material was in fact forwarded to both the authorities.

7. Learned A.G.P. is unable to refute the abovementioned factual position. A perusal of the impugned orders indicates that competent authority has not adverted to any material which has been produced nor has proper and reasonable opportunity been afforded to petitioner.

8. We are of the view that petitioner should have been issued a caste certificate by the competent authority. Ultimately, it is not in dispute that for claiming benefits meant for

Reserved categories such certificates have to be scrutinised and verified by scrutiny committee in accordance with law. Unless scrutiny and validity is done such benefits are not admissible is the admitted position. Therefore, caste certificate can be issued to the petitioner subject to the condition that it must be duly scrutinised and verified by scrutiny committee and unless such scrutiny and verification is made and validity certificate issued no benefits available for reserved category be extended to him.Mr.Mendadkar, learned Counsel appearing for petitioner is aggreable to have the claim being verified and scrutinised. He submits that caste certificate be issued and unless the same is validated, petitioner will not claim any benefits available for reserved categories.

9. In the light of the aforesaid, we are of the view that ends of justice would be met if respondent No.3 is directed to issue caste certificate in favour of petitioner within a period of three months from today. However, the petitioner will not be entitled to any benefits on the strength of such caste certificate unless

the same is duly scrutinised and verified by Scrutiny committee (respondent No.2). Needless to observe that scrutiny committee would be free to scrutinise and verify the caste claim of petitioner on merits and in accordance with law, uninfluenced by the directions issued by us. All contentions in that behalf are expressly kept open. However, we expect that scrutiny committee would scrutinise and verify caste claim of petitioner after the caste certificate is issued in his favour by the competent authority expeditiously so as not to deprive him of any benefits.

10. With the aforesaid directions petition is disposed of.

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